

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CLARK DISTRIBUTION SYSTEMS, INC.,	:	CIVIL ACTION NO. 1:10-CR-2575
	:	(consolidated)
Plaintiff	:	(Chief Judge Conner)

v.

**ALG DIRECT, INC.,
Defendant**

=====

**THE CLARK GROUP, INC.,
Plaintiff**

v.

**ALG DIRECT, INC.,
Defendant/Third Party Plaintiff**

v.

**CLARK DISTRIBUTION SYSTEMS, INC.,
Third-Party Defendant**

ORDER

AND NOW, this 29th day of May, 2014, upon consideration of the report of Magistrate Judge Susan E. Schwab (Doc. 117) recommending the court grant plaintiff Clark Distribution Systems, Inc.'s ("CDS") partial motion (Doc. 94) to dismiss defendant's amended counterclaim (Doc. 93) for loss of business damages in connection with its counterclaim for breach of contract, and, following an independent review of the record, the court agreeing with the magistrate judge that CDS's motion is timely and not moot, and the court further agreeing that the parties' Transportation Services Agreement ("TSA") precludes ALG's claim for loss of business damages against CDS,

and it further appearing that neither party has objected to the report, and that there is no clear error on the face of the record,¹ see Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that “failing to timely object to [a report and recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level”), it is hereby ORDERED that:

1. The report of the magistrate judge (Doc. 117) is ADOPTED in its entirety.
2. Plaintiff’s partial motion (Doc. 94) to dismiss is GRANTED.
3. ALG’s amended counterclaim (Doc. 93) is DISMISSED with prejudice to the limited extent that it seeks to state a claim for loss of business damages in connection with its counterclaim for breach of contract.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania

¹ When parties fail to file timely objections to a magistrate judge’s report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. Thomas v. Arn, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit expects courts to “afford some level of review to dispositive legal issues raised by the report.” Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that “[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” FED. R. CIV. P. 72(b), advisory committee notes; see also Henderson, 812 F.2d at 878-79 (stating that “the failure of a party to object to a magistrate’s legal conclusions may result in the loss of the right to *de novo* review in the district court”); Tice v. Wilson, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that the court’s review is conducted under the “plain error” standard); Cruz v. Chater, 990 F. Supp. 375-78 (M.D. Pa. 1998) (holding that the court’s review is limited to ascertaining whether there is “clear error on the face of the record”); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that the court will review the report and recommendation for “clear error”). The court has reviewed the magistrate judge’s report and recommendation in accordance with this Third Circuit directive.